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Cover Page Footnote

Acting Professor, UCLA School of Law. For critical comments and assistance, I thank Joseph Doherty and Saul Sarabia. I also received helpful comments from Charlton Copeland, Ryan Dunn, Lisa Griffin, Jerry Lopez, Shayla Myers, Doug NeJaime, Eugene Volokh, Hentyle Yapp, and many who attended a presentation sponsored by the Williams Institute at UCLA School of Law. A special thanks to my research assistant, Greg Furtado, who played a substantial role in designing and carrying out the Internet study described in the last part of this essay. As always, the library staff of the Hugh and Hazel Darling Law Library provided top-notch assistance.

STRUCTURAL DIMENSIONS OF ROMANTIC PREFERENCES

*Russell K. Robinson**

In this essay, I make two main points: First, I call for a focus on the impact of structural conditions on preferences regarding intimacy. We tend to think our preferences are natural and fixed when, in fact, they may be more plastic and susceptible to structural influences than we imagine. To illustrate this theme, I examine a few structures that channel our preferences, namely, racial screening mechanisms on Internet dating web sites and sex segregation in queer social spaces. Second, I provide a warning against uncritical celebrations of increasing interracial intimacy as a sign of reduced prejudice and social progress. Our celebrations should be tempered by the awareness that race structures even our most intimate relationships. Although two people have crossed racial lines and may have even committed to spending their lives together, we cannot easily conclude that they have transcended race. Because race and gender intersect to determine an individual's value in the romantic marketplace, the two partners are unlikely to be similarly situated in terms of their options for leaving the relationship should it become unhappy. For instance, black heterosexual men enjoy greater options for interracial coupling than do black heterosexual women.¹ Further, people of color who are in interracial relationships may have to suffer racialized microaggressions in order to maintain the relationship. Yet these subtle insults may escape the awareness of the white partner in the relationship, who might not intend to cause any harm or see the comments as racially offensive. One source of such racialized harms is likely to arise from racial disagreements in perceiving discrimination. Because black people and white people tend to view allegations of discrimination through fundamentally different lenses,

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1. See Kellina M. Craig-Henderson, *Black Men in Interracial Relationships: What's Love Got to Do with It?* 5 (2006) ("Today, Black men are more than twice as likely as Black women to be involved in an interracial relationship.").

they are likely to disagree as to the existence of discrimination, even when they are in an intimate relationship.

This essay allows me to extend the analysis from three of my prior publications and explore their intersections. First, I consider whether a proposal I made regarding expressions of racial preference in casting advertisements² might be applied to such preferences in the online dating context. Second, I extend to the romantic arena a phenomenon that I identified as “perceptual segregation,” previously examined primarily in the workplace.³ Third, I have previously argued that, in predominantly white and gay romantic marketplaces, men of color face pressure to conform to certain racialized sex roles, such as the “aggressive black top” and the “submissive Asian bottom.”⁴ In the final part of this essay, I present an empirical study of online dating trends that tests this argument.

I. THE INFLUENCE OF STRUCTURE

A. *Race, Segregation, and the Numbers Game*

Law and social norms create structures that channel and limit our interaction with people of various identities. This structuring of our social environments determines, in part, the romantic possibilities and inclinations we imagine, express, and pursue. However, the presence of such structures and their influence on our romantic choices is often overlooked. People often report that they just like what they like, expressing little awareness of the structural influences that might account for their preferences.⁵

Residential segregation is a primary influence on romantic preferences.⁶ For many, living and/or working in a neighborhood or workplace in which one race predominates makes it difficult to connect romantically with a person of a different race. As a race-conscious African American who is often in predominantly white settings, residential segregation has impacted my romantic preferences in a more complex fashion. I grew up in a mostly white neighborhood in the Midwest and attended a mostly white religious school. As an upper-middle-class adult professional, I continued to find

2. See Russell K. Robinson, *Casting and Caste-ing: Reconciling Artistic Freedom and Antidiscrimination Norms*, 95 Cal. L. Rev. 1, 51–56 (2007).

3. See generally Russell K. Robinson, *Perceptual Segregation*, 108 Colum. L. Rev. (forthcoming June 2008) (on file with author).

4. Russell K. Robinson, *Uncovering Covering*, 101 Nw. U. L. Rev. 1809, 1822 (2007).

5. Consider the following examples from an article on Asian-white interracial dating: “I’m just not attracted to Asian guys,” says Reesa, a 32-year-old Filipin[a] American who lives in Northern California. “I don’t know why. I just never have been. I’ve just always dated white or European guys.” Tony, a Japanese-American man interviewed for the same article, says: “‘I’ve never been attracted to Asian women My type is a blonde-haired girl Blondes have caught my eye for some reason.’” Helen E. Sung, *Dating Outside the Color Lines: Is It Just Innocent Color-Blind Love, or Asian Evasion?*, Audrey, Aug./Sept. 2005, at 54, 56, available at <http://www.audreymagazine.com/Sep2005/Features03.asp>.

6. See, e.g., Eduardo Bonilla-Silva, *Racism Without Racists: Color-Blind Racism and the Persistence of Racial Inequality in the United States* 39 (2006).

myself in mostly white environments, where similarly situated black partners were few and far between. Although my parents raised me to prefer blacks (women, that is), it was difficult to act on this preference since I was often in work and social settings that offered few options in terms of black romantic partners. The pickings became even slimmer once I identified as queer. Consider the numbers game: A heterosexual white person who lives in a mostly white neighborhood and wants to date only white people faces few limitations. If, say, eighty percent of the neighborhood is white, almost half of that number (either the male or female half) is available for partnering. Even if ten percent of the whites identify as gay or lesbian (a generous assumption),⁷ the white heterosexual still has ample options for same-race partnering. The black heterosexual, by contrast, is limited to half of the black population, which is twenty percent of the community.⁸ Black heterosexual women are likely to face a further disadvantage—and black heterosexual men, a relative advantage—because of the sex ratio imbalance in black populations in the United States.⁹ In part because of the mass incarceration of black men, the number of eligible black women significantly outstrips that of eligible black male partners.¹⁰

The romantic market for the black queer man is even worse. He is subject to the same diminution of the black male population that impacts black women. Yet he also is limited to the fraction of black men who engage in sex with men. If he identifies as openly gay and prefers to date only other openly gay black men, his market is further reduced because black men appear less likely than white men to identify as gay.¹¹ He may

7. See Brad Sears, *Diff'rent Strokes*, Village Voice, June 22–28, 2005, at 28 (citing statistics suggesting that there are six million queer-identified Americans and 281 million heterosexual-identified Americans—in other words, two percent of Americans identified themselves as queer).

8. This stylized scenario assumes that only blacks and whites exist in the neighborhood or that, to the extent that Asians, Latinos, and Native Americans are included, the black person has a preference for blacks rather than all people of color.

9. See, e.g., Adaora A. Adimora & Victor J. Schoenbach, *Social Context, Sexual Networks, and Racial Disparities in Rates of Sexually Transmitted Infections*, 191 J. Infectious Diseases S115, S117, S119 (2005).

10. *Id.* at S118 (stating that “[t]he shortage of [black] men places [black] women at a disadvantage in negotiating and maintaining mutually monogamous relationships, because men can easily find another relationship if they perceive their primary relationship to be problematic”).

11. According to one Centers for Disease Control and Prevention (CDC) study of young men in six major cities, eighteen percent of black men who have sex with men reported that they did not disclose their sexuality generally, while just eight percent of white men failed to disclose. See Ctrs. for Disease Control & Prevention, *HIV/STD Risks in Young Men Who Have Sex with Men Who Do Not Disclose Their Sexual Orientation—Six U.S. Cities, 1994–2000*, 52 Morbidity & Mortality Wkly. Rep. 81, 82 (2003). The survey was conducted from 1994 to 2000 and focused on men aged fifteen to twenty-nine who lived in Baltimore, Dallas, Los Angeles, Miami, New York, and Seattle, and who attended a men-who-have-sex-with-men-identified venue. *Id.* Other men of color were also less likely to disclose than whites. *Id.*

choose to deal with men who have sex with men but do not identify as gay, bisexual, or queer, yet if he is seeking a long-term committed relationship, this may very well be an exercise in frustration. The preferences of an out black professional who lives and works in predominantly white settings are thus impinged by at least three structural constraints that do not similarly restrict white gay men: (1) his racial group is in the minority; (2) men of his race are less likely to identify as openly gay, which may make it harder to spot and connect with black men who have sex with men; and (3) there is a substantially smaller proportion of black men who are not incarcerated or otherwise under the supervision of the criminal justice system and would be eligible in terms of having a similar educational and socioeconomic background.

Looking back at my own romantic trajectory, I can now see how place and structure, and these specific aforementioned structural constraints, have influenced my choices. The pivotal development in my decision to come out was my move from Los Angeles to Washington, D.C. While clerking at the U.S. Court of Appeals for the Ninth Circuit, I lived in Pasadena, a small, mostly white suburb north of Los Angeles. I did not discern a significant gay community in Pasadena, which made it easy for me to avoid attending to my own growing interest in men. Occasionally, I would hang out in West Hollywood with a fellow law clerk who lived there. "Weho," as they call it, is, of course, very visibly gay.¹² But it is also overwhelmingly

There are a number of reasons why some black men do not identify with the term "gay," which I explore more fully in a work-in-progress, tentatively titled *Racing the Closet*. Although homophobia in the black community is often cited as the sole explanation for black men not identifying as gay or bisexual, a more in-depth analysis reveals that other factors include white exclusion of blacks in the representational arena. See Devon W. Carbado, *Black Rights, Gay Rights, Civil Rights*, 47 UCLA L. Rev. 1467, 1472 (2000). Other expressions of racism in the gay community include policies excluding blacks from access to gay clubs. See, e.g., Rona Marech, *Panel Finds Bias at Castro Bar: Owner Denied Entry to Black Patrons, Commission Reports*, S.F. Chron., Apr. 27, 2005, at B2. Black men also may be particularly impacted by the erasure of bisexuality and the norm that holds that any man who admits having had sex with a man is automatically classified as gay.

12. Another structural aspect of many large urban environments is the "gay neighborhood." Many view these communities as "natural," although they are fairly recent innovations and, according to a recent New York Times article, there are signs that they are dying in part because they do not resonate with younger generations of queer people. See Patricia Leigh Brown, *Gay Enclaves, Once Unique, Lose Urgency*, N.Y. Times, Oct. 30, 2007, at A1. Such enclaves are usually gay male dominated. The number of lesbian public spaces is typically dwarfed by the numerous opportunities for men to meet and mate. The separation of spaces by gender within the lesbian, gay, bisexual, transgender community—and the broader demarcation of "straight" and "gay" meeting places—are structures that implicate romantic preferences. As I describe more fully below, rigid separation of men and women into distinct sex-designated spaces frustrates the potential for sexuality to develop in ways that do not neatly map onto our artificial sexual categories. Studies show that despite labels suggesting that people are entirely monosexual, a significant number of people, including self-identified gay men and lesbians, sometimes engage in sex that is inconsistent with such labels. See Michael W. Ross et al., *Concordance Between Sexual Behavior and Sexual Identity in Street Outreach Samples of Four Racial/Ethnic Groups*, 30 Sexually Transmitted Diseases 110, 110 (2003). Sex segregation then, although said to facilitate sexual liberation, may actually stunt certain affiliations.

white, and the performances of gay identity that I saw there struck me as strange and inaccessible. I do not recall being approached by men (white, black, or other) or meeting anyone that I wanted to date. Moreover, I quickly learned that the black men in these spaces seemed not to be looking for another black man. They were in this white-dominated neighborhood, in most cases, because they wanted to date white men. I could not relate because I neither preferred white men, nor did I think I was the “type” of black man typically preferred by white men.¹³ Another factor that alienated me from others was my feeling that I did not have much in common with the black, white, and other men in West Hollywood, because of the centrality of their sexual identity and immersion in a particular sexual culture. By contrast, my sexual identity almost always seems less relevant to me than my racial identity. These differences made it easier to avoid acknowledging what I did have in common with these men—we all desired to have sex with men.

After my Ninth Circuit clerkship, I accepted a job at the Office of Legal Counsel in the U.S. Department of Justice, which required a move to Washington, D.C., a city I did not expect to like. However, D.C. provided precisely what West Hollywood lacked. For the first time in my life, I was surrounded by attractive black men on a regular basis, when walking down the street, riding the metro, and going to the gym. These men seemed like me, and some of them seemed to like me, instead of preferring white men. The exposure to a more diverse and relatable gay community prompted me to recognize my sexuality, finally act on it, and ultimately reconfigure my identity. Although I have since learned that similar black men exist in Los Angeles, the structure of the city, with racially distinct communities separated by long, intractable freeway rides, rendered black men largely invisible to me at the time and delayed my romantic development.

B. *Internet Design and Romantic Preferences*

A structure of increasing importance in romantic marketplaces is the Internet.¹⁴ This is especially the case in cities like Los Angeles where online personals sites can help people navigate the city’s unwieldy landscape. When I moved back to Los Angeles, I turned to the Internet to find the black men that had largely eluded me during my first stint in Los Angeles. During that first stay, I was unaware that the Internet was emerging as a primary means of connecting men who have sex with men

13. See Voon Chin Phua & Gayle Kaufman, *The Crossroads of Race and Sexuality: Date Selection Among Men in Internet “Personal” Ads*, 24 J. Family Issues 981, 992 (2003) (“Preferences for minorities often are tinted with stereotypical images: Asians as exotic, docile, loyal partners; Hispanics as passionate, fiery lovers; and Blacks as ‘well-endowed,’ forbidden partners.”); Robinson, *supra* note 4, at 1822 (discussing social pressure on men of color in white gay spaces to play up racial stereotypes such as black hypermasculinity and Asian passivity).

14. For an enlightening overview of racial discrimination and the Internet, see Jerry Kang, *Cyber-race*, 113 Harv. L. Rev. 1130 (2000).

(MSM). Although I lived on the wealthy, predominantly white west side of the city, the Internet created opportunities for me to interact with men in Inglewood, Compton, or Long Beach—men I almost certainly would not meet randomly while going through my daily routine on the west side. Even as the Internet increases romantic opportunity, it also channels interactions, either making it easier or more difficult for us to avoid those who are inconsistent with our perceived preferences. Like many dating web sites, Match.com prompts the user to indicate which races he will and will not date. Match.com's search engine asks the user which of nine alphabetically organized "ethnicities" he will date. Interestingly, this part of the search engine is listed under the heading "Background/Values," which implies a conflation of racial ancestry/appearance and certain moral or cultural "values." Because these search engines facilitate racial discrimination (which may or may not be problematic, as I discuss further below), if a white user is interested only in white romantic partners, he can easily structure his screen so that he never even has to view nonwhite profiles.

Web site designers face a range of options with regard to eliciting and managing racial information. Subtle structural differences in design might very well influence the likelihood that the user expresses and acts on a racial preference. Rather than simply passively permitting people to specify their racial preferences, some web sites demand that users identify their race and/or the races of the people they are willing to date. Such web sites thus require users who prefer not to state their race or other traits to provide information that others may then use to discriminate against them. The Ninth Circuit recognized this insight recently in *Fair Housing Council v. Roommates.com, LLC*, a housing discrimination case brought against the web site Roommates.com.¹⁵ The question presented was whether the Communications Decency Act (CDA) shields web sites for their involvement in expressions of roommate preference based on sex, sexual orientation, and other protected traits.¹⁶ The Ninth Circuit held that while Congress intended generally to protect web sites for passive transmission of illegal material, that protection stops when a web site directs the illegal conduct.¹⁷ Roommates.com shapes preferences by prompting heterosexuals

15. See *Fair Hous. Council v. Roommates.com, LLC*, Nos. 04-56916, 04-57173, 2008 WL 879293, at *1 (9th Cir. Apr. 3, 2008) ("In addition to requesting basic information—such as name, location and email address—Roommate requires each subscriber to disclose his sex, sexual orientation and whether he would bring children to a household. Each subscriber must also describe his preferences in roommates with respect to the same three criteria: sex, sexual orientation and whether they will bring children to the household.").

16. See *id.* at *1; 47 U.S.C. § 230 (2000).

17. See *Roommates.com*, 2008 WL 879293, at *7 (noting that the web site was "engineered to limit access to housing on the basis of the protected characteristics" and that "Roommate designed its search and email systems to limit the listings available to subscribers based on sex, sexual orientation and presence of children"). The U.S. Court of Appeals for the Ninth Circuit distinguished a Seventh Circuit case involving Craigslist, which has policies against discrimination but does not monitor all content for discriminatory

to think about sexual orientation and giving them an opportunity categorically to exclude self-identified queer people.

Similarly, we might view web site design that forces people to think about race and express racial preferences in romantic decisions as problematic. Of course housing discrimination is different because no federal statute presently bans racial discrimination in dating or marriage.¹⁸ Nonetheless, it is valuable to think through whether the housing context provides a helpful framework for curbing racial discrimination in dating through structural mechanisms. We should think carefully about the legal and moral implications of web site design decisions, which are hardly neutral, and we should seek to understand their impact on channeling personal preferences. In this part, I imagine some possibilities that few have recognized, but I do not advocate a particular legal intervention. My tentative approach reflects the immense complexity of racial preferences in dating and mating decisions and any potential legal intervention. Although I describe racial preferences in dating as “racial discrimination,” I do not mean to suggest that all such preferences are wrong. Indeed, as suggested by my discussion of perceptual segregation in Part II, I believe that a person of color who has experienced persistent racial conflict in romantic relationships might legitimately adopt a preference for people of his or her own race.¹⁹ In this short essay, I cannot resolve the difficult question of when it is legitimate to take race into account in making dating and mating decisions.²⁰ However, I do maintain that many racial preferences rest on nothing more substantial or legitimate than rank stereotyping (for instance, men of a certain race are aggressive or effeminate or dirty). Recognizing the complexity of various justifications animating racial preferences, and that I am treading on new ground, my goal here is simply to explore some fresh possibilities and illuminate dimensions of a rather challenging issue.²¹

One such possibility is that a government concerned with racial preferences in dating and mating might focus on structural mechanisms instead of regulating individual decisions, which most people would

preferences. *See id.* at *9 n.33 (citing Chi. Lawyers’ Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc., No. 07-1101, 2008 WL 681168 (7th Cir. Mar. 14, 2008)).

18. *See id.* at *7 (“A dating website that requires users to enter their sex, race, religion and marital status through drop-down menus, and that provides means for users to search along the same lines, retains its CDA immunity insofar as it does not contribute to any alleged illegality . . .”).

19. For an eloquent narration of one race-conscious black woman’s experiences in interracial relationships, which led her to decide not to date white men, see Kim McLarin, *Race Wasn’t an Issue to Him, Which Was an Issue to Me*, N.Y. Times, Sept. 3, 2006, §9, at 9.

20. For an insightful analysis of the morality of taking race and disability into account in forming intimate relationships, see Elizabeth F. Emens, *Intimate Discrimination: The State’s Role in the Accidents of Sex and Love* (Apr. 10, 2008) (unpublished manuscript, on file with author).

21. *See* Randall Kennedy, *Interracial Intimacies: Sex, Marriage, Identity, and Adoption* 33 (2003) (noting that “intimate association typically receives far less attention than other racial topics”); *id.* at 37 (emphasizing the complexity of studying interracial intimacy).

oppose. Lawmakers might consider regulating web site design decisions that produce, exacerbate, or facilitate racial preferences. With respect to employment and housing, federal law generally bans printing or posting notices that express a preference based on race or another protected trait.²² While I do not expect Congress or any state to extend such laws to dating web sites in the near future, my hope is that at least people involved in designing and maintaining web sites will think critically about the racial implications of their choices as they establish the infrastructure of a dating web site. Whether compelled or encouraged by law or adopted voluntarily, the designers of a web site might reduce users' consideration of race in assembling a pool of potential dates. This move would track the proposal I made in the context of casting film.²³ In an article considering the legal implications of race and sex discrimination in the casting process, I argued that casting decision makers should avoid including race and sex classifications in casting announcements (unless the nature of the storyline requires the actor to appear as a particular race and/or sex).²⁴ Declining to use race to screen people at the outset of the casting process, or when a user is initially constructing a pool of potential dates, does not mean that people must be colorblind. But it does require them to see the people who do not fit their preconceived notions of what "black" people or "white" people are like. As a result of this expanded pool of options, many people might very well find that the stereotypes that guide their racial preferences are unfounded, or at least that there are plenty of people whom they perceive as exceptions to the stereotype.

There is a spectrum of potential policies for managing racial information and racial preferences, ranging from those that heighten the salience of race to those that attempt to obscure it. The following list illustrates some options ranging from the most race salient to the least:

- require users to state racial preferences;
- require users to identify their race and permit users to search by race;
- require users to identify their race but do not permit race-based searches;
- ask for any or all of the above racial information but allow users to opt out of identifying their race and racial preferences;
- post statements encouraging users not to discriminate based on race;

22. See 42 U.S.C. § 2000e-3(b) (2000) (employment); 42 U.S.C. § 3604(c) (housing). The statutes' underlying bans on discrimination provide exceptions for small employers and owners of a single family home and other minor landlords. See 42 U.S.C. § 2000e(b) (defining employer); 42 U.S.C. § 3603(b)(1) (setting forth housing exemptions).

23. See generally Robinson, *supra* note 2.

24. See *id.*

- encourage users to “flag” statements of racial preference and remove flagged statements;²⁵
- remove all racial references in profiles (with respect to self and/or dating preferences).

How might such structural choices impact personal preferences? Under one of the abovementioned options, a site might ask a user’s height, weight and neighborhood, but not her race. How many people, I wonder, would write race into their profiles, if the web site administrators did not prompt them to think about race? In the empirical study described more fully below, we examined profiles from one gay-oriented web site that does not prompt users to indicate racial preferences in establishing their profiles but does require a user to identify his own race. Under these conditions, less than fifteen percent of profiles indicated a racial preference.²⁶ This finding is consistent with a study of Yahoo! personals, which found that just nine percent of white users mentioned a racial preference.²⁷ Thus, a web site that did not prompt users to state racial preferences might elicit facially race-neutral profiles from the majority of people who use the site.

If a law adopted some of the strongest policies against racial discrimination in dating, it might face considerable opposition from the public and raise First Amendment concerns. For example, a law compelling administrators to monitor text submitted by users to purge it of all racial references would directly and significantly restrict individual speech. Judicial precedent upholding laws banning the expression of racial preferences in housing and employment contexts would be inapposite because of two key distinctions. First, the courts are unlikely to categorize the underlying activity (dating) as “commercial,” as they do employment and housing discrimination.²⁸ Second, the law would not penalize the underlying romantic decisions, thus making unavailable the First Amendment exception for advertisements promoting unlawful activity.²⁹

25. See Craigslist—Fair Housing is Everyone’s Right!, <http://www.craigslist.org/about/FHA.html> (last visited Apr. 21, 2008) (“If you encounter a housing posting on craigslist that you believe violates the Fair Housing laws, please flag the posting as ‘prohibited.’”). The web site further explains, “If a post receives enough negative flags it will automatically be removed (only one flag per person per post is counted). Posters whose postings are repeatedly flagged are subject to staff review and additional remedial measures.” See Craigslist—Flags and Community Moderation, http://www.craigslist.org/about/help/flags_and_community_moderation (last visited Apr. 21, 2008). A dating web site might adopt a similar policy, which would allow people offended by expressions of racial preference to engage in self-help.

26. See *infra* note 100.

27. Phua & Kaufman, *supra* note 13, at 988.

28. *Pittsburgh Press Co. v. Pittsburgh Comm’n on Human Relations*, 413 U.S. 376, 387–88 (1973); *Ragin v. N.Y. Times*, 923 F.2d 995, 1002–03 (2d Cir. 1991).

29. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 563 (1980) (“[T]here can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about *lawful* activity.” (emphasis added)); *Ragin*, 923 F.2d at 1003 (determining the validity of a ban on a discriminatory housing advertisement by reference to the underlying statutory ban in the Fair Housing Act).

At the other end of the spectrum, policies similar to the one at issue in the *Roommates.com* case require self-identification even when a user would prefer not to specify her identity or sort her dates by that particular trait. A court should approach a free speech challenge to a law regulating such requirements with greater skepticism. Importantly, the issue here is not whether government can silence individuals' speech about race but whether government can prevent the web site from requiring the user to speak about race and subject herself to discrimination.³⁰ Arguably, such a law would actually promote speech while curbing race discrimination. It would require the web site to leave it to the individual to write race into her profile or leave it out. Moreover, it appears that no court has held that web design is "speech" for purposes of the First Amendment.³¹ This space does not allow me to explore the legal implications of each design regulation with respect to the First Amendment and the CDA.³² My main point is that a range of options exist and, at a minimum, web site designers might voluntarily pursue some of these options for reducing the salience of race. A web site designer that is committed to racial equality might reasonably decide not to require people to express racial identity and preferences.

None of the policies mentioned above, however, would actually eliminate race from dating because most sites permit users to post photographs of themselves. This failure might actually be a virtue because it preserves some space for the legitimate consideration of race and might make such a law seem more valid.³³ Although photographs provide racial information, discerning race is not as easy as many think. Photographs that are not tethered to a racial classification and the various performative aspects that

30. Compare *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 375 (1969) (upholding the "fairness doctrine" because it enhances free speech values), with *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (rejecting the "compulsory access law" because it interfered with the newspaper's editorial judgment).

31. In *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002), the U.S. Supreme Court treated as speech and ultimately invalidated a federal pornography statute that criminalized certain "visual depictions" of underage sexuality. *Id.* at 241; cf. *Langdon v. Google, Inc.*, 474 F. Supp. 2d 622, 629–30 (D. Del. 2007) (stating that the court would violate the First Amendment if it ordered Google to display plaintiff's advertisement). A statute narrowly targeting web site architecture, while permitting users to post whatever visual and textual matter they desire, is arguably different.

32. For instance, an important question would be whether the Court deems the law to be content-based, which would trigger strict scrutiny. See *Texas v. Johnson*, 491 U.S. 397, 414–15 (1989). That determination can be rather difficult. See, e.g., *Hill v. Colorado*, 530 U.S. 703, 723–24 (2000) (noting the disagreement between the majority and dissent regarding whether a law was content-based). Even if strict scrutiny applied, the Court might find that encouraging interracial interaction is a compelling governmental interest. Cf. *Grutter v. Bollinger*, 539 U.S. 306, 328–29 (2003) (deeming diversity in higher education a compelling interest in the equal protection context).

33. Cf. Robinson, *supra* note 2, at 51 (noting that "[c]ourts can . . . accommodate both speech and equality in the casting context by creating minor procedural hurdles that create space for decision makers to consider the race and/or sex designation carefully and reflect on alternative casting options prior to making their ultimate decision").

constitute race (talk, walk, clothing, etc.)³⁴ might not provide conclusive evidence of race. Many people think that race is obvious and biological, but there is tremendous racial variation in the physical features among the people grouped under the umbrella of a particular "race."³⁵ Moreover, the first and sometimes only view of a potential date on many web sites, including Match.com, is a small "thumbnail" photograph, and such photographs may not disclose all the features necessary in order for a user to discern race. On some sex-oriented web sites, including Adam4Adam.com, a popular gay web site, many users (who may have sex with men but do not necessarily identify as "gay") do not publicly post facial photographs. Because sex is often, but not always, the focus, many users publicly post photographs such as a naked torso, a penis, and/or buttocks. Under these circumstances, the racial classification may provide necessary evidence for a user to distinguish whites from light-skinned Latinos and Latinos from blacks, for instance. Hence, without the assistance of racial classifications, users might initially be drawn to photographs of some people who do not "look black" or "look Latino" and yet are. At the same time, some users might avoid whites with olive skin and curly hair because they perceive such people to be nonwhite. In this way, the intervention would scramble racial perception and racial preferences to a limited extent. Users might arrange to meet someone without knowing for certain that person's racial background. Indeed, they might enter romantic relationships based on a misapprehension of the other person's race. In this way, web sites would facilitate interracial interactions that might not otherwise occur.

Match.com automatically generates "matches," people whose profiles it says are compatible. When I signed up for Match.com years ago, I frequently opened the weekly e-mail from this site to find that several of the people the site selected as my matches (many white, but some black or otherwise of color) were perfect for me in every way, except they did not check the box saying they would date blacks. In writing this essay, I signed up for Match.com again simply to see whether the same pattern would appear, and once again the site proffered "matches" who did not want to date blacks. Beyond the bizarre design of the software, which both established an infrastructure for expressing racial preferences and then ignored those preferences in notifying me about my ostensible matches, I found it depressing to get weekly reminders of the romantic aversion that

34. See, e.g., Devon W. Carbado & Mitu Gulati, *The Fifth Black Woman*, 11 J. Contemp. Legal Issues 701, 717–19 (2001) [hereinafter Carbado & Gulati, *Fifth Black Woman*] (suggesting that grooming choices, such as wearing dreadlocks and African attire, determine an individual's racial salience); Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 Cornell L. Rev. 1259, 1265 & n.11 (2000) [hereinafter Carbado & Gulati, *Working Identity*].

35. See, e.g., Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 Harv. C.R.-C.L. L. Rev. 1, 7 (1994).

many people of all races continue to feel toward black people.³⁶ However, on the flip side of these e-mails, I wonder if Match.com sent my profile to the men who said they did not want to date blacks. If so, it would be expanding the pool of potential dates, contrary to the user's preference, and subtly encouraging them at least to consider black people.

Over time, the geography of Los Angeles and the structure of certain Internet sites subtly shifted my racial preferences. When living in D.C. and later New York City, by and large I did not look at white men as potential romantic partners because of the ample and visible supply of black MSM in these urban centers and an upbringing that encouraged me to seek a black partner. Upon returning to Los Angeles, and dealing with the end of my long-term relationship with a black New Yorker, I initially sought out black men as I would have in New York. I quickly learned, however, that the number of black men on the web sites that I frequented seemed smaller than the number of whites, Latinos, and others. Thus, I began to widen my search and open myself to the possibility of dating nonblacks. This new openness resulted in a handful of dates with white men, but no real connections. Moreover, I noticed a racial trend in my correspondence on the Internet. It seemed that my introductory e-mails to black men were more likely to be returned than those sent to white men. Although I never empirically tested the response rate, I would estimate that for every ten e-mails I sent to white men, I received three replies, while I received replies from seven out of ten black men. It also seemed that the black men were more likely to want to meet me immediately while the white men's responses tended to be ambivalent and mainly exploratory. In response to these market dynamics, I eventually returned to a focus on black men because attempting to connect with white men seemed less likely to result in an enduring connection. I suspect that people of all races take such expectations into account in many contexts when considering whether or not to approach someone. For instance, whether one is at a bar or the grocery store, attempting to strike up a conversation with an attractive stranger is risky and intimidating to many because we fear rejection and humiliation. If one thinks that white men are more likely to reject him than black men, it would make sense to target black men and perhaps set a higher threshold for approaching white men such as requiring them to be very attractive or waiting for them to signal an interest before approaching.³⁷

Although few might think it problematic that dating web sites facilitate racial preferences, I believe we should think more critically about such

36. See, e.g., Phua & Kaufman, *supra* note 13, at 985–87 (studying Yahoo! personal ads and finding that users were least likely to express a preference for blacks).

37. Cf. *id.* at 984 (suggesting that men of color may expect white men not to be interested unless their profile says “all races are welcomed” or “race doesn’t matter”). Because some black people openly profess a preference for a black partner, see *infra* text accompanying note 39, some white people might believe that blacks are not interested in them and thus focus on other races.

facilitation and not quickly conclude that law is powerless to impact these structures. As I have outlined above, whether structural interventions are legally compelled or voluntary, they may erode racial stereotypes and thus reshape preferences. Nonetheless, there would be costs to regulating dating web sites and banning or discouraging the expression of racial preferences. Although antidiscrimination laws often focus on deterring discrimination by whites, most laws, including Title VII, also ban discrimination by people of color. If the law applied to all races in the context of dating web sites, it would constrain the racial preferences of blacks and other minorities, which might be less likely to rest on stereotypes. A study that compared references to race in 2400 Yahoo! personal profiles from men found that men of color were more likely than whites to mention race.³⁸ Indeed, blacks were six times more likely than whites to mention race.³⁹ Of the black men seeking men, fourteen percent mentioned race simply to state that they had no racial preference, and thirteen percent expressed a preference for whites only.⁴⁰ Just nineteen percent expressed a preference for blacks only.⁴¹ The authors of the study concluded that “minority men are more sensitive to race than are White men, probably due to their experiences as minorities.”⁴² Whereas whites have the privilege not to think about race,⁴³ I have argued elsewhere that blacks tend to see race consciousness as necessary to their survival in white-controlled domains.⁴⁴ This phenomenon may extend to intimate realms as well. Since blacks spend their days at work trying to rebut racial stereotypes and navigating the pressure to uphold colorblind norms by rendering “racial comfort,”⁴⁵ they may find the prospect of doing this work in the most intimate realms of their lives to be distasteful. They may crave a space where, at the end of a long day, they can lay down the burden of being black, and just be. Sadly, because of the persistent racial disparities between blacks and whites, it may be very difficult for a black person to experience this type of racial transcendence with a white person. I argue below that blacks may be particularly likely to have nonstereotypical reasons for avoiding relationships with whites, including the racial conflict that often stems from black-white differences in perceiving discrimination.⁴⁶ At the same time,

38. *See id.* at 991.

39. *See id.* at 989.

40. *See id.* at 988.

41. *See id.*

42. *Id.* at 991.

43. Barbara J. Flagg, “*Was Blind, But Now I See*”: *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 Mich. L. Rev. 953, 969–73 (1993) (stating that “the white person has an everyday option not to think of herself in racial terms at all”).

44. *See Robinson, supra* note 3 (manuscript at 55–56).

45. *See generally* Carbado & Gulati, *Working Identity*, *supra* note 34, at 1294; Robinson, *supra* note 13, at 1838.

46. A white person might also prefer not to date black people because of the expectation of racial conflict. Some expectations may be based on racial stereotypes, such as “black women have attitude” or “black men are angry.” Even when such expectations are not based

racial minorities are likely to have a special need for screening in order to effectuate their preferences. Because whites are in the majority, they would likely have an ample number of white potential partners even if web sites did not permit racial classifications and race-based searching of their databases. It is true that they would have to consider some people of color, but often the majority of the “matches” generated by the site or obtained by the user would continue to be white. By contrast, people of color on mostly white web sites would have a harder time connecting with the few potential mates who are people of color. They may have to wade through a large pool of white prospects in order to access the elusive person of the same race. Such regulation would be problematic in that it would exert greater pressure on minorities to cross racial lines than it would on white people. It may exacerbate the structural impediments, such as residential segregation and wealth disparities, which already isolate minorities who live and work in white-dominated spaces. Because not all reasons for racial preferences are problematic, we must consider the identities and the contexts that shape any particular preference.⁴⁷

C. Constraining Queer Sexuality and Reifying Heterosexuality

This part briefly considers the impact of social and Internet structures on sexual preferences for men or women, in addition to the issue of sex segregation in queer communities. The designation of certain spaces as queer, as in the Castro in San Francisco or Chelsea in New York City, has a dual function. These mostly urban spaces draw people who are interested in exploring their sexuality and might have limited opportunities in rural and suburban areas.⁴⁸ In this way, they cultivate and enable queer preferences. However, by designating certain spaces as officially queer, do we also implicitly identify the rest of the world as officially straight? This demarcation of spaces allows self-identified straight people to avoid queer spaces and remain within the straight zones—where they are protected from queer advances, which might challenge their sexual identity. Roommates.com’s effort to help straight people avoid queer roommates might be understood as a structure that similarly protects heterosexuality. Brad Sears has written that his entrée into the gay community and dating black men came through attending a gay club with his then-girlfriend.⁴⁹ Unlike the highly specialized and largely monochromatic gay male clubs that predominate in large cities today, this club was a general home for outsiders: “lesbian and gay, black and white, young and old, the trannies

on stereotypes, blacks and whites are not similarly situated because only whites have the privilege not to engage race in their daily lives.

47. See Kennedy, *supra* note 21, at 29 (rejecting the simple-minded notion that “all racial distinctions are the same” and arguing for the “need to discriminate among discriminations”).

48. See, e.g., Sears, *supra* note 7.

49. See *id.*

and the wheelchair.”⁵⁰ Sears writes that an interaction with a black man who challenged his failure to be out “sparked a revolution in my worldview and self-image.”⁵¹ In major cities today, most queer clubs and bars are dominated by either men or women, and a “heterosexual” couple like Sears and his then-girlfriend would stand out like a sore thumb.

The Internet similarly reflects a strict separation of romantic markets. For example, Match.com requires the user to search for either a man or a woman; users cannot simultaneously search for potential male and female dates.⁵² Thus, it erases the possibility of bisexuality.⁵³ One might think that my proposals with respect to race should be extended to sex so that profiles cannot specify sex, and users cannot search based on sex. But sex is different.⁵⁴ Such an intervention would approach compulsory bisexuality. Requiring men who want to have sex with men to wade through a large pool of women (and vice versa) seems too invasive given a narrower fix; instead of a man having to state that he is looking for a man or a woman, he should be able to state that he is looking for either.⁵⁵

Although inclusive social spaces seem to be fading in the United States, they may be more prevalent in particular communities abroad, where sexual identity seems not to be as rigid and reductive. During the summer of 2007, friends in Argentina took me to a cavernous club with a crowd that was very mixed in terms of sexual orientation. This diversity extended even to a “dark room.” In this space, my friends told me, queer and straight couples made out alongside each other, and importantly, the spatial integration allowed a significant number of men who are not easily defined as queer or straight to blur sexual boundaries. According to my Argentine friends, the club attracts men who identify as straight but might occasionally have sex with another man they meet at the club. This integrated back room is thus a structure that complicates crude lines of identification and facilitates sexual exploration, expanding romantic preferences as much as we confine them in U.S. gay ghettos.

50. *Id.*

51. *Id.*

52. See Match.com, <http://www.match.com/> (last visited Apr. 3, 2008) (prompting the user to state whether he is a “man” or a “woman” and whether he is searching for a “man” or a “woman”).

53. On the interests of gay/lesbian people and straight people in minimizing bisexuality, see, for example, Kenji Yoshino, *The Epistemic Contract of Bisexual Erasure*, 52 Stan. L. Rev. 353 (2000).

54. See Emens, *supra* note 20 (manuscript at 5) (“Sex is so foundational to the way we talk about desire that we rarely include it in the description of someone’s type; it’s assumed.”).

55. Even the requirement that a person identify as a “man” or a “woman” is too narrow in that transgendered people may feel excluded. Perhaps a bisexual person may set up two profiles, assuming that the site permits users to create multiple profiles. In any event, a site’s failure to include the option of bisexuality in its “man looking for woman” framework likely influences behavior. Cf. Russell Korobkin, *Psychological Impediments to Mediation Success: Theory and Practice*, 21 Ohio St. J. on Disp. Resol. 281, 308–14 (2006) (reviewing studies on the impact of framing on behavior).

Romantic spaces tend not only to be segregated into “straight” and “queer” zones but in queer communities, they are often rigidly designated for men or women. We might benefit from thinking critically about the influence of such sex-segregated structures. How might the norms governing a social space be transformed by including queer women with queer men? It is possible that certain male-identified traits, such as a fixation on sexual conquest and gratification,⁵⁶ would be diluted if women were present. I pause to emphasize that I am not arguing that men are naturally hypersexual and women are naturally less sexual beings, but that the social norms that say men are supposed to simply want to hook up and lesbians are supposed to want to “U-Haul”⁵⁷ might be disrupted and complicated if men and women socialized together more. Perhaps more queer women would feel free to hook up, and more queer men would feel free to pursue a relationship.

Further, we should ask whether the misogyny that continues to be expressed by many gay men is bolstered by the de facto men-only policies in most spaces where queer men socialize. Corey Johnson and Diane Samdahl’s ethnographic study of a country-western gay bar in a southern city documents the animosity that gay men expressed when lesbians flocked to the bar on Thursdays, the bar’s sole “lesbian night.”⁵⁸ Although a number of respondents claimed that the bar welcomed everybody, gay male respondents simultaneously made negative remarks about women: describing women as “fish,” a derogatory term for female genitalia; calling a woman who caused a man to spill his beer a “[d]umb [c]unt”; complaining about “fucking dykes!”; and revealing a general aversion to the bar on lesbian night.⁵⁹ Many of the men expressed seemingly baseless stereotypes that the lesbians at the bar were poor tippers, bad dancers, and generally rude.⁶⁰ These troubling intergroup dynamics call for greater

56. See Stephen Ellingson & Kirby Schroeder, *Race and the Construction of Same-Sex Sex Markets in Four Chicago Neighborhoods*, in *The Sexual Organization of the City* 93, 97 (Edward O. Laumann et al. eds., 2004) (arguing that gay male culture encourages separating sex from intimacy, while lesbian culture promotes longer-term relationships).

57. This is a reference to a long-standing joke in the lesbian community:

Q: What does a lesbian bring on a second date?

A: A U-Haul.

See U-haul Lesbian, http://en.wikipedia.org/wiki/U-Haul_lesbian (last visited Apr. 1, 2008).

58. Corey W. Johnson & Diane M. Samdahl, “*The Night They Took Over*”: *Misogyny in a Country-Western Gay Bar*, 27 *Leisure Sci.* 331, 337 (2005).

59. *Id.* at 332, 341. In the words of one gay man who refused to take his friends to the bar on Thursdays, “Gay men are like flipped out if there are like more than two [lesbian] women in a place, you know two women in a bar. They are like, “Oh god [sic] there is [sic] all these lesbians everywhere.” *Id.* at 342 (first alteration in original).

60. *Id.* at 344–45. The authors suggested that sexual interest explained some of these perceptions. The all-male bartenders were more likely to flirt with gay male customers than lesbians, and thus the men were more likely to tip. *Id.* Similarly, a man who is bumped by another man on a crowded dance floor might use it as an opportunity to meet and flirt, but that same man might have little interest in engaging a female who bumps him.

study as to how to overcome such stereotyping and proprietary attitudes over queer spaces.⁶¹

II. RACE IN THE BEDROOM

My second main point is that race structures our relationships, even when we think we have transcended it. Race may determine how power is allocated and exercised in interracial relationships. Racial privilege does not vanish simply because two people have committed to a relationship or marriage. It may continue to be a third member of the partnership, present in the bedroom and the relationship more generally, even if it is cloaked by norms of colorblindness.

I illustrate this dynamic by drawing on a phenomenon that I call perceptual segregation.⁶² I argue that black people and white people who observe the same interracial incident are likely to disagree as to whether the white person committed discrimination. This is so because black people and white people, on average, subscribe to different definitions of discrimination and use disparate evidentiary standards for identifying discrimination. Because blacks, for various reasons, are likely to define discrimination more broadly than whites and less likely to require evidence of bad intent, the black partner in an interracial relationship may perceive discrimination where her white partner does not. She then must decide whether to articulate this perception or to “cover” it. In general, people of color and women who complain about discrimination are characterized as whiners, hypersensitive, and enthralled by a victim mentality.⁶³ The popular refrain “He’s just playing the race card” often functions to deflect black perceptions and conclude that the real problem is the black person’s deluded mindset. There is no reason to think that the general social aversion to and skepticism of black complaints about discrimination evaporate when two people fall in love or have sex.

Because the black partner and white partner in an interracial relationship have inherited different racialized conceptions of discrimination from their respective communities, they are likely to experience perceptual conflict in the context of their relationship. This conflict could emerge in myriad ways

61. I am not categorically opposed to men-only or female-only social spaces, whether queer, straight, or mixed in terms of sexual orientation. But I find it disappointing that the social and political possibilities for coalitions between queer men and queer women are often subordinated to a narrow focus on constructing a ready supply of potential sexual hook ups.

62. For an in-depth analysis of this phenomenon and an application to the legal system’s adjudication of Title VII claims, see Robinson, *supra* note 3 (manuscript at 136–201).

63. See, e.g., Cheryl R. Kaiser & Carol T. Miller, *Derogating the Victim: The Interpersonal Consequences of Blaming Events on Discrimination*, 6 Group Processes & Intergroup Relations 227, 228 (2003) [hereinafter Kaiser & Miller, *Derogating the Victim*]; Cheryl R. Kaiser & Carol T. Miller, *Stop Complaining! The Social Costs of Making Attributions to Discrimination*, 27 Personality & Soc. Psychol. Bull. 254, 254 (2001) [hereinafter Kaiser & Miller, *Stop Complaining*]; Gretchen B. Sechrist et al., *Mood as Information in Making Attributions to Discrimination*, 29 Personality & Soc. Psychol. Bull. 524, 525 (2003).

and might manifest itself in many mundane daily encounters. An experience as routine as dining out might provoke a racial dispute if the couple experiences adverse treatment from the staff. For example, the hostess might appear to seat an all-white party before the interracial couple, or the waiter might seem aloof or hostile toward the couple.⁶⁴ In most scenarios, there could be multiple and potentially intersecting explanations for this adverse treatment—the hostess is incompetent, the restaurant is very busy, and/or the waiter is having a bad day.⁶⁵ Perceptual segregation suggests that the black partner is likely to be more race-conscious than the white partner and more vigilant in monitoring potential discrimination. The white partner, meanwhile, might think the best way to overcome race is to ignore it. In light of this belief in colorblindness, the white partner may gravitate toward the nonracial explanations for the adverse treatment. Warren, a man included in social psychologist Kellina Craig-Henderson's study of black men in interracial relationships, reported that, during his eight-year relationship with a white woman, he often noticed that people around them in public places were uncomfortable.⁶⁶ Although Warren was attentive to these adverse reactions, his white partner was "usually totally oblivious to their reactions and could have cared less."⁶⁷ When pressed as to why he noticed other people's reactions, he explained, "Well because, ummm . . . my being Black and I have to deal with this. I have to be aware . . ."⁶⁸ His white girlfriend did not have to, and apparently that perceptual difference created a rift between them. Because of these clashing mindsets, the couple may be predisposed to disagree when confronted with issues of potential discrimination. Note that these disagreements could encompass many social-political issues as well. For example, surveys have shown a substantial black-white divide regarding perceptions of the role of race in the government's inadequate response to Hurricane Katrina, the extent of racial bias in the criminal justice system, the likelihood that the government created AIDS to harm black communities, and the extent to which the government subjects black government officials to greater surveillance.⁶⁹ Thus, not only daily interactions but also news reports bear the potential to spark racialized disagreements.

64. See, e.g., Julie Schmit & Larry Copeland, *Cracker Barrel Customer Says Bias Was 'Flagrant,'* USA Today, May 7, 2004, at 1B (describing lawsuits by black and interracial parties who alleged that the Cracker Barrel restaurant chain discriminated against them).

65. Craig-Henderson, *supra* note 1, at 123 (reporting the experience of Gary, who stated that "'it was mostly a matter of perception . . . for example, if we get a bad table in a restaurant or very slow service . . . you're never really certain'").

66. See *id.* at 101–02. Although I emphasize a number of the problematic responses from Kellina Craig-Henderson's interviews, a number of the men explained their involvement in interracial relationships in ways that were not stereotypical or otherwise troubling. See, e.g., *id.* at 107–08 (discussing Damon, who was not looking for a white woman but ended up happily married to one, much to his surprise).

67. *Id.* at 102.

68. *Id.*

69. Robinson, *supra* note 3 (manuscript at 15–17, 39–41).

People in interracial relationships are likely to respond to this conflict in two ways. First, they may argue frequently about such issues. In addition to the arguments that a couple might have for all sorts of nonracial reasons, the interracial couple must also manage potential conflict over race, one of the most intensely felt and polarizing topics. The racial differences in perception thus impose an extra burden on black-white relationships. Of course, some all-black couples and all-white couples might also disagree about race at times, but they are more likely to agree than interracial couples because they are more likely to have had similar racial experiences. One might expect that white people who form relationships with blacks tend to be more race-conscious and sympathetic to black perceptions of race than the average white person. This seems true for some people in interracial relationships, but the extent of this dynamic is unclear. Further, studies suggest that other people engage in interracial relationships for reasons that would not seem to reflect a progressive, race-conscious mindset.⁷⁰ For instance, Craig-Henderson argues that some people in interracial relationships are motivated by a desire to flout social norms or are animated by racial stereotypes, including aesthetic preferences shaped by white supremacy (for example, the belief that black men are more sexually aggressive and well-endowed, or the notion that white women have more beautiful physical features, such as long straight hair). For instance, one of the subjects in her study of black men in interracial relationships said that “there was no such thing as an ‘unattractive White woman.’”⁷¹ Some people might view their interracial partner as a racial trophy.⁷² Others may justify their preference for nonblacks by stereotyping their own race. L.G., a man in Craig-Henderson’s study, explained that his aversion to black women resulted from his belief that they do not have “their act together . . . financially, emotionally . . . and spiritually, or any of those types of things,” and he does not want to put up with “a lot of games and a lot of nonsense.”⁷³ We can also see the flip side of this phenomenon by looking at online profiles of people who, rather than refusing to date black people, actively seek them out. For instance, one white man who responded to an Internet profile of a black top described himself as a “Total GWM [gay white male] bottom into size and aggressive masculine total top

70. Consider this white man’s explanation for why he prefers Asian women: “[H]e stated he liked them because their food ‘is awesome,’ they are ‘just so attractive to me,’ and he ‘just love[s] the Asian race, it’s mystical to me in a way.’” Bonilla-Silva, *supra* note 6, at 118 (second alteration in original).

71. Craig-Henderson, *supra* note 1, at 97.

72. *Id.* at 96–97 (discussing interviewee Derrick, who Craig-Henderson described as “obsessi[ve]”).

73. *Id.* at 105. L.G.’s explanation is ironic because this is precisely the sort of charge that black women sometimes level at black men. See Joy Jones, *Marriage Is for White People*, Wash. Post, Mar. 26, 2006, at B1.

men who know what they want. Blk tops ++. . .”⁷⁴ This man’s preference for black men thus appears to rest on a stereotype that black men are essentially “aggressive” and “masculine,” expected to have big penises (the reference to “size”), and to be “total tops.”⁷⁵ I discuss additional profiles that express a racial preference in Part III.

A second reaction to racial conflict may occur even when the white partner is more race-conscious than the average white person and does not subscribe to racial stereotypes, but still does not quite see eye-to-eye with her black partner. Couples can avoid arguments over race if one (or both) of the partners suppresses conflicting perceptions. For instance, if a white woman disagrees with her black husband’s assertion that the hostess in a restaurant is racist, she may withhold her contrary opinion to preserve peace. Or the black husband may silence his instinct that he was subjected to discrimination at work and decide not to confront the perpetrator because he does not want to upset his wife. Consider Derrick, the man in Craig-Henderson’s study who stated that “there was no such thing as an ‘unattractive White woman.’”⁷⁶ He acknowledged that he had to “tough it out” while spending time with his Cuban wife’s family because they “frequently made racial slurs, and emphasized the fact of his Blackness.”⁷⁷ Derrick learned to laugh at such slurs because that reaction ingratiated him with his in-laws, yet he privately harbored animosity toward them.⁷⁸ He also disclosed that he had to limit his interactions with other black people because his wife “did not feel comfortable around other Black people, including his friends and family.”⁷⁹ When he tried to confront his wife about her aversion to other blacks, she denied the racial element, stating it was not “a racial thing,” but she was just not a social person.⁸⁰ Some people of color may deal with the potential for racial conflict by adopting a colorblind mentality, which is pervasive among whites.⁸¹ One way of

74. This person responded to a profile that we posted as part of the empirical study detailed below. This profile and all data compiled in the empirical study are on file with the author.

75. Another respondent, who described himself as a thirty-eight-year-old man of mixed racial heritage, similarly stated in his profile, “looking for hung, verbal, assertive tops that knows [sic] how to work a willing, submissive btm [sic]. happiest making you feel good! like men around my age or older . . . ethnic men to the front of the line.”

76. See Craig-Henderson, *supra* note 1, at 97.

77. *Id.* at 98. Although this example involves a Cuban woman, who may have been able to pass for white, I do not mean to imply that Latinos in general are aligned with the “white” perspective in perceiving (or failing to perceive) instances of discrimination.

78. See *id.*

79. *Id.*; see also *id.* at 119–20 (discussing Chester, who “generally avoided seeing certain ‘Black’ movies with his wife” because they might make her “‘uncomfortable’”).

80. *Id.* at 98.

81. See *id.* at 103 (discussing M.B., who stated that he and his white girlfriend “view people as people. For us, color just doesn’t matter”); see also Robinson, *supra* note 3 (manuscript at 124 n.251) (discussing psychological evidence suggesting that many people of color and women minimize discrimination as a coping mechanism). See generally Gary Blasi & John T. Jost, *System Justification Theory and Research: Implications for Law, Legal Advocacy, and Social Justice*, 94 Cal. L. Rev. 1119 (2006) (applying system

transcending race, then, may be the choice (conscious or unconscious) not to acknowledge race or the burdens it imposes on one's life. The racial divide on issues of discrimination and the substantial work that must be done to soften or bridge that divide, through various mechanisms (e.g., rendering racial comfort, "toughing it out," or adopting a colorblind perspective) shed new light on the preferences that some people of color might have for wanting to date or marry a person of the same race.⁸²

Craig-Henderson's book includes only men who identify as heterosexual. We can see how these dynamics play out in a queer context by turning to Dwight McBride's book *Why I Hate Abercrombie & Fitch*.⁸³ In this book, McBride recounts his interracial dating experiences while in graduate school at UCLA. In one case, he was approached by a white man at a club. After a few minutes of conversation in which the two seemed to be connecting, the white man said he and his friends were "out looking for black guys tonight." The white man smiled as if McBride would be impressed, and perhaps grateful. But he was not. There was a racialized perceptual divide—what the white man intended as a compliment or enticement actually upset McBride. McBride writes,

At that moment, I wanted to be far away from him . . . [and] from the gay world that had brought me a perceived sense of liberation only a few months before That same gay world was now beginning to teach me some important lessons . . . about my value in that world and the ways in which race and racism would have congress in even my most intimate of negotiations within it.⁸⁴

The white man's interest appeared to start and stop with McBride's skin color and the attributes he assumed to correlate with it. After all, the white friends were looking for blacks just for "tonight." Tomorrow, having satisfied their momentary fetish, they would presumably move on to something else. Maybe it would be "Latin night."

On another occasion, McBride met a white man and eventually slept with him. The sex was good, McBride writes, until his white partner yelled out,

justification theory, which holds that outsiders have strong incentives to minimize discrimination in order to avoid the view that the social world is structurally aligned against them). Craig-Henderson found particularly noteworthy that several men in her study could not recall a single instance of adverse reaction to their interracial relationship. Craig-Henderson, *supra* note 1, at 124.

82. These particular concerns of blacks and other people of color are distinct from the concerns that whites often cite as a basis for not wanting their family members to enter interracial marriages. See Bonilla-Silva, *supra* note 6, at 121–22 (citing interviews with a white person who opposed interracial marriage because of purported harms to interracial children); *id.* at 123 (noting that whites sometimes used the discrimination faced by interracial couples to justify their opposition to interracial relationships). The concern is not simply that the interracial couple will have to face social discrimination, but rather that some of the racial dynamics prevalent in society (i.e., perceptual segregation) will invade the intimate relationship as well.

83. Dwight A. McBride, *Why I Hate Abercrombie & Fitch: Essays on Race and Sexuality* (2005).

84. *Id.* at 88, 120.

“‘Give me that big black dick!’” at which point McBride says he nearly went limp.⁸⁵ Later, the white man told him, “‘You are the first black guy I’ve ever been with.’”⁸⁶ Again, McBride’s white partner either intended these comments as compliments or was indifferent as to how McBride would receive them.

The biggest mystery in light of the numerous interracial indignities and disconnections McBride catalogues in his book is why he continued to engage white men. Part of the answer likely lies in structure. Spending most of his time at UCLA, like me, he likely had limited opportunities to meet black men of a similar educational and social class. As a result of these structural constraints, McBride apparently made a compromise: he would date white men, but only under certain circumstances.⁸⁷ I can only imagine that one of these rules must have been “No talking during sex.”⁸⁸

When race is not frankly engaged in relationships, the white partner and the black partner might have completely distinct experiences. Because the black person is likely to be more race-conscious and more sensitive to potential racial slights, she may be engaged in a constant racial negotiation. The white partner, by contrast, may be oblivious to these dynamics and attest that they enjoy a colorblind relationship. Meanwhile, the black partner may be asking: How much racial education should I have to do in this relationship? How many offensive remarks must I let slide? How many experiences with discrimination should I stifle for fear of aggravating my partner? At what point does it all become too much? And to the extent that some people of color have a high tolerance for racial humiliation and continue to prefer white people, what does that tell us about the enduring appeal of whiteness, even in communities of color?

III. ASSESSING RACIAL PREFERENCES AMONG MEN WHO DATE MEN

This part presents a study that generates empirical data on the impact of race in internet dating interactions among MSM. Very little research has explored this topic. Much of the previous scholarship focuses only on heterosexuals.⁸⁹ The most relevant study on Internet dating among gay men found that men of color were more likely to mention race in their ads than white men, and that black men were least likely to be preferred.⁹⁰

85. *Id.*

86. *Id.* at 121.

87. *See id.* at 124–25 (describing the responses of black men to the “gay marketplace of desire . . . that centers on ‘whiteness’”).

88. For a humorous take on rules for dating a “whiteboy,” see James Hannanham, *Mr. White Now: Beware the Chocoholic*, Village Voice, June 22–28, 2005, at 29.

89. *See, e.g.,* Kennedy, *supra* note 21, at 39 (acknowledging that “[a]ll too little is said here about gay and lesbian relationships”); Shauna B. Wilson et al., *Dating Across Race: An Examination of African American Internet Personal Advertisements*, 37 J. Black Studies 964, 970–71 (2007) (studying 200 profiles of African Americans on Match.com presumably looking for partners of the other sex without giving specific attention to profiles seeking partners of the same sex).

90. *See* Phua & Kaufman, *supra* note 13, at 988–89.

However, that study did not consider how race intersects with sex role. Recognizing this limitation, the authors called for future research to “delve deeper” into the “sexual stereotypical objectification of ethnicity.”⁹¹ This research seeks to fill that void.⁹²

We assessed racial preferences among MSM that connect with men on a popular web site, Adam4Adam.com (A4A).⁹³ The research consisted of two stages. First, we conducted a preliminary survey of profiles in order to determine how frequently web site users explicitly mentioned a racial preference. We also evaluated these profiles to get a sense of the justifications and stereotypes animating racial preferences. Because only 14.3% of the profiles we surveyed expressed a racial preference, we developed a second phase to ascertain preferences that people might be reluctant to state overtly.

In the second part of the study, we created personal profiles in order to compare the relative demand for men of color who perform particular sex roles. Race appears to shape romantic opportunities through prevalent stereotypes that assign men of color to certain sex roles based on their race or ethnicity. For instance, I have argued elsewhere that black men are often expected to be hypermasculine, sexually aggressive, and well-endowed.⁹⁴ By contrast, Asian men may be stereotyped as passive, submissive, and more likely to adopt a feminine role in a gay couple.⁹⁵ This study enabled me to put such arguments to the test. But why do such stereotypes matter? In my view, they limit individual freedom by putting pressure on men of a particular race to conform to the stereotype in order to maximize the number of dates he may obtain. Because of the norm of colorblindness,⁹⁶ we cannot expect all people to be frank about their racial preferences when it comes to dating and partnering. Although preliminary analysis showed that a relatively small number of users expressed racial preferences in their profiles, we wanted to learn whether a larger group of men had racial preferences, even if they would not articulate them expressly and might not have even been conscious of them. Thus, this study attempted to discern aggregate trends reflecting demand for men of particular races who play particular sex roles in the marketplace of desire. For instance, we asked

91. *Id.* at 992. Voon Chin Phua and Gayle Kaufman examined thousands of Yahoo! personal ads, but they did not post ads in order to compare responses to ads posted by men of different races. *Id.* at 985–87.

92. This research also attempts to answer the call by Devon Carbado and Mitu Gulati for greater scholarly and judicial attention to intraracial distinctions in order to understand racial discrimination fully. *See, e.g.,* Carbado & Gulati, *Fifth Black Woman*, *supra* note 34, at 720–21.

93. I conducted this study with my research assistant, Greg Furtado, who provided invaluable assistance. In addition, my colleague Saul Sarabia advised and assisted with the study. UCLA’s Office for Protection of Research Subjects Institutional Review Board approved this research.

94. *See* Robinson, *supra* note 4, at 1822–23.

95. *See id.*

96. *See, e.g.,* Robinson, *supra* note 3 (manuscript at 74–75).

whether there is more demand for a black top (the sex role widely perceived as masculine) than for a black bottom (widely perceived as more feminine).

We ascertained these trends by posting nearly identical profiles on A4A. The statistics and descriptions of the profiles we posted were very similar,⁹⁷ but each time we posted the profile, we changed the race and sex role. Importantly, each profile featured one photo of the same model, an attractive and fit personal trainer. Because we did not use different models, one cannot attribute the differences in market interest to the attractiveness of particular models or features. Our goal was to control for physical attractiveness as we determined aggregate racial preferences by comparing the number of e-mails that each profile attracted. The ultimate goal of this project is to demonstrate the impact of race in determining the opportunities that men have for finding romantic partners and the pressures that racial stereotypes exert on certain men of color.

A. Methodology

For the first stage of this project, we analyzed expressions of racial preferences stated in personal profiles on A4A. We studied roughly 500 profiles,⁹⁸ which were selected based upon their sequential order in random searches of personal profiles in the Los Angeles area. We created an account with no identifiable information in order to navigate the site and search through the profiles. We conducted a search with only the following geographical parameters: North America, California, southern California/Los Angeles, and all areas. No other categorical restrictions (e.g., race, age, sex role) were used.

On October 24, 2007, the first 300 personal profiles were viewed and saved as PDF documents in sequential order. This was done by opening each ad in its own window and then converting that window into a PDF document. On October 29, 2007, another 215 personal profiles were viewed and saved as PDF documents in the same fashion.

We saved personal profiles and gave each a numerical identifier based only on the order in which they were viewed and saved. We then put profiles into a database linking the numerical identifier with a username, geographical location, sexual position, race, and racial preference.

97. The statistics of each profile (height, weight, penis size, etc.) were identical for each profile. The primary difference was that we changed the profile's text slightly so that users of the web site would not become suspicious. For example, the first racial profile (i.e., white top) included text stating, "No-nonsense man looking for same. Cut to the chase about what you want." The second racial profile (i.e., white bottom) contained the same basic message but in different language: "Let's get to the point. No games or BS." Because we thought the black profiles might provoke the most skepticism because of our model's racial features, we wrote the black profiles so that the profile referred to the subject as a "light-skinned black man."

98. We recorded 515 profiles to account for potential duplicates in our searches. Ultimately there were five duplicates, which we discarded. Thus, the final number of profiles was 510.

Username were used to identify any duplicate personal profiles acquired during the second session on October 29, 2007.

Numerical designations were assigned to major geographical locations within Los Angeles, race, and sexual position, as defined by the web site.⁹⁹ Racial preferences were assessed for the six racial categories identified by the web site (Asian, black, Latino, Middle Eastern, white, and mixed). If a racial preference was stated or implied, a numeric identifier (1) was entered for the particular race so identified. The direction of that preference, whether positive or negative, was then captured by changing the sign of the numeric identifier previously entered. Thus, a statement in a profile looking for Asian men would be identified with a +1 in the Asian column. A statement in a profile that the user was not looking for Asian men would be identified with a -1 in the Asian column. Personal profiles stating that they were looking only for a certain race were identified with a +1 in the column of the stated race and a -1 for all other racial categories. Just 14.3% of the profiles in our sample expressed a racial preference.¹⁰⁰

For the second stage of this project, personal profiles were created on the web site with only the following information: username, picture, location, profile headline, profile text, age, height, weight, waist size, body type, hair, body hair, looking for (users can state that they are looking for sex and/or relationships, etc.), race, sex role, smoke (whether the person smokes or not), and penis size. Each profile included a photograph of the same model, whose shirtless torso was exposed. The photographs did not disclose his face, which is common on the web site.¹⁰¹ The model is an attractive, athletic Latino gay man, and we selected him because his skin color was not

99. The eleven geographical locations were assigned numbers alphabetically. Thus, downtown was "1," east Los Angeles was "2," Echo Park and Westlake was "3," and so forth. Similarly, the six racial categories were assigned numerical identifiers with Asian being assigned "1," black "2," and so on, though mixed was assigned "6," outside the otherwise alphabetical order. The five sexual position preferences were assigned numbers based on the sequential order as given by A4A. Top was "1," bottom was "2," versatile/top was "3," versatile/bottom was "4," and versatile was "5."

100. Of the profiles that expressed a racial preference, the hierarchy of preference for a particular race was as follows: whites (49.3%), Latinos (43.8%), blacks (39.7%), and Asians (9.6%). The hierarchy of preference against a particular race was as follows (starting with the group least preferred): Asians (8.2%), blacks (5.5%), whites (4.1%); and Latinos (2.7%). These numbers might be read to suggest that a unique disadvantage attaches to Asians. However, I hesitate to draw conclusions from this sample since a small number of profiles overtly stated racial preferences and unlike the second stage of the study, this sample reflects only men in Los Angeles. Moreover, there does not appear to be any reason to think that the subset of people who express racial preferences are representative of the remaining, vast majority of people who decline to state a racial preference, but might nonetheless have implicit racial leanings. See Steven D. Levitt & Stephen J. Dubner, *Freakonomics: A Rogue Economist Explores the Hidden Side of Everything* 83 (2005) (discussing a study of online personal ads showing dissociation between white users' stated lack of racial preferences and their tendency to send e-mails overwhelmingly to white profiles). The second part of the study attempts to measure more directly such implicit racial preferences.

101. The profiles were also created with a locked "private pic" that was never unlocked during the course of the study.

near either end of the color spectrum (neither extremely pale nor extremely brown).

The racial designation (Asian, black, Latino, and white) and sex role (top or bottom) were then varied for each profile that we created. Username, picture, profile headline, and profile text were also varied depending on the race and sex role of the personal ad. Pictures were of the same model and varied only in pose and lighting.

Usernames were generated based upon the race of the personal profile being posted and the sex role of the profile. Some profiles were also created with a neighborhood location or a numeral to add variety, though the numeral assigned was neutral enough so as not to imply penis size.¹⁰² We selected locations within Los Angeles and New York to avoid neighborhoods with strong racial identities (such as Harlem in New York). We chose downtown for Los Angeles and midtown for New York. In selecting these specific neighborhoods, we intended to discern the racial dynamics of white-dominated marketplaces of desire, not the various ethnic pockets throughout the city, which might exhibit very different norms and trends in terms of racial preferences.

We made profile headlines as brief as possible and mainly reiterated the basic race and sex role information contained in the profile. Thus, one profile headline read "White Top Seeing What's Out There" and another read "No-nonsense White Bottom." Profile text was kept short, similar to the profile headline, in order to minimize extraneous information and to keep uniformity among the profiles. Each profile headline conveyed the basic message to keep communications brief in order to facilitate hooking up more quickly. For example, one profile read, "No-nonsense man looking for same. Cut to the chase about what you want." Another profile read, "Let's get to the point. No games or BS."

Age, height, weight, waist size, body type, hair, body hair, looking for, smoke, and penis size were the same for every personal ad. Each personal ad was for a twenty-five-year-old man, five feet nine, 167 pounds, thirty-one-inch waist, athletic body type, black hair, smooth body, nonsmoking, eight-inch penis, looking for "1-on-1 Sex," "3some/Group Sex," or "Relationship." We selected these statistics in order to maximize the attractiveness of the profile and yet minimize (to the extent possible) tension with prevailing racial stereotypes. For example, we worried that if we made the height six feet two, some users might doubt that an Asian man would be that tall. No profile included any expression of racial preference or any other sign that might have deterred people of other races from expressing interest.

A4A requires approval of all pictures uploaded to a personal ad. Since obtaining approval requires as much as forty-eight hours, profiles were created two days before the designated Saturday evening when we signed

102. Some users of the site incorporate references to their penis size (for example, "Teninchtop") in their usernames in order to attract interest.

onto A4A with the profile. Although users can search all active profiles, the users who are currently online are displayed most prominently and often receive the most messages. We created each profile and posted it once by signing on during a Saturday night in the following order in Los Angeles: white top, white bottom, black top, black bottom, Asian top, Asian bottom, Latino top, and Latino bottom. The order in New York was the following (reverse racial): Latino top, Latino bottom, Asian top, Asian bottom, black top, black bottom, white top, and white bottom. The postings occurred from February 2, 2008, through March 22, 2008. Each Saturday during this period we posted one profile in Los Angeles and one in New York.

We signed on each profile for one hour on a Saturday evening starting at 10:00 p.m. (PST) in Los Angeles and 1:00 a.m. (EST) in New York. We selected these times because we expected them to be prime time for men looking to connect with another man, and we anticipated that the New York scene extended later than the Los Angeles scene. We counted all e-mails that the profile received from initial posting (which typically happened on Friday) until Saturday evening at 11:00 p.m. (PST) in Los Angeles or Sunday morning at 2:00 a.m. (EST) in New York. During the hour in which we signed on with the profile, we recorded racial demographics for the first 100 users randomly displayed using the "Members Online" function of the web site for each area (in Los Angeles and New York). After the hour had elapsed, we signed off and made a PDF screen capture of the e-mail inbox of the profile to show the total number of e-mails received during that hour and then saved the screen capture as a PDF file. We also took a PDF screen capture of each individual e-mail received and the sender's profile. We then deleted the profile that we had posted. We did not respond to any e-mails or initiate conversations with any users. We simply posted each profile and let the users of the site respond.

B. Results & Discussion

The results of this study produced three main findings. First, as depicted in Figure 1 (next page), the results suggest a racial hierarchy among MSM. The white and Latino profiles received a similar number of e-mails, while the Asian and black profiles received a significantly smaller number. This finding suggests that scholars must be careful when discussing discrimination against people of color in romantic marketplaces. Not all racial minority groups are similarly positioned. The closeness of the results for whites and Latinos is surprising. Although white profiles received four more e-mails than Latino profiles, the difference is not statistically significant. However, as I discuss below, there are important intraracial distinctions among Latinos that warrant further study.

The second main finding is that the black bottom profiles were uniquely disadvantaged. This finding thus partially confirms this essay's hypothesis regarding the interaction of racial stereotypes and sex role. In general, the top profiles drew more e-mails than the bottom profiles, but the starkest disparity between top and bottom was among the black profiles. As

predicted by the stereotype of black male endowment and virility, the black top profiles drew substantially more e-mails (twenty-six) than the black bottom profiles (four), which received the fewest e-mails in the entire study.

Figure 1: Number of E-mails Received by Race

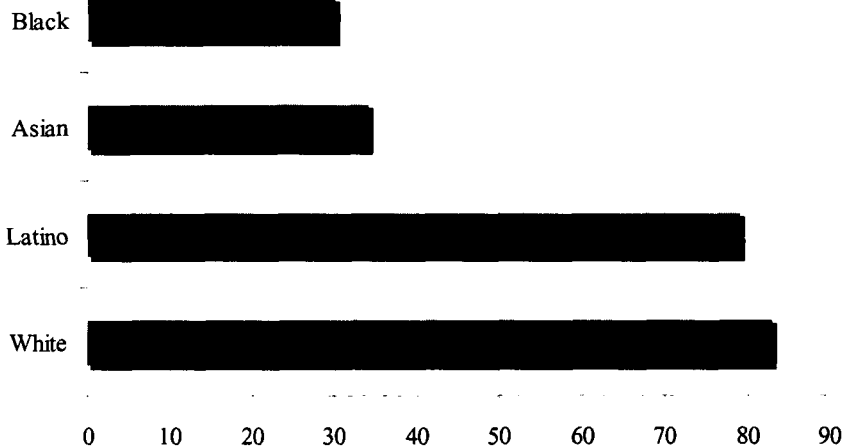
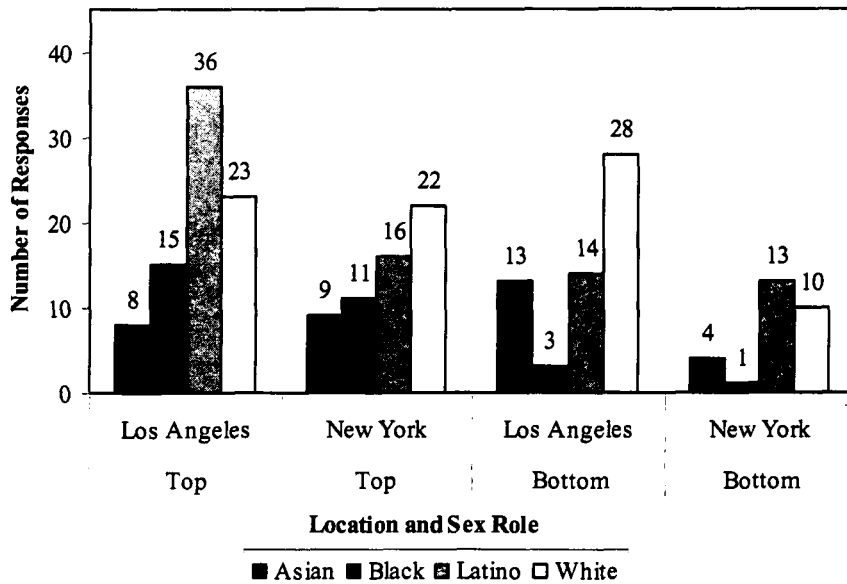


Figure 2: Number of Responses to Each Profile, by Race, Location, and Sex Role Conditions



The disinterest in the black bottom fully extended to black respondents to the profiles. Indeed, not a single black respondent (or Asian or Latino respondent) sent an e-mail to a black bottom profile. It thus appears that some black men in white-dominated marketplaces of desire may have internalized the stereotype of black male virility and may have little interest in black men who are perceived as violating this norm. The image of a black man being penetrated may simply be too far afield from the iconic image of rapper 50 Cent, who is viewed as masculine, aggressive, and, in some quarters, essentially black. By contrast, a black man who identifies as a bottom may be viewed as the inverse of the so-called "hypermasculine" black man represented by 50 Cent. Since users have limited information about the person behind the profile, they might use sex role as a proxy for effeminacy, flamboyancy, and being openly gay, which may be disfavored traits. They may think it is shameful and "un-black" to identify as a bottom.¹⁰³ Black men looking for bottoms may express more interest in men of other races because a white man or Asian man bottoming, for instance, does not violate any racial norm to which the black men subscribe. I emphasize that this norm does not operate only among blacks. Although a few white men sent e-mails to the black bottom profiles, the strikingly low number of e-mails suggests that men of all races have little interest in black men who identify as bottoms. The stereotype of black men as "hypermasculine" might have whipsawed the black tops since perceptions of black male aggression are linked to the stereotype of black male criminality. Because many men use A4A for relatively anonymous hook ups and tend to meet at one of the sexual partners' residence, concerns about safety are crucial. As appealing as the black top might be, fear of being victimized (in bed or after sex) might have dampened interest in connecting with black men.¹⁰⁴

A related pattern emerged from the responses to the Latino profiles. There was substantially more interest in Latino top profiles (fifty-two e-mails) than Latino bottom profiles (twenty-seven), although the market for Latino bottoms clearly surpasses that for black and Asian bottoms. We expected the black top profiles to enjoy a special advantage because of the

103. There may be a distinction between identifying as a bottom and performing the bottom role at times. For instance, some men on A4A identify as tops yet seek only other tops. The implication is that at least one of the tops will bottom but neither holds himself out as a bottom publicly. We found some support for this phenomenon. Approximately 8% of the respondents to top profiles also identified as tops; another 9% of the respondents to top profiles identified as a "versatile/top," which is supposed to signify that one usually, but not exclusively, performs the top role in intercourse. But we did not find a comparable pattern of bottoms responding to bottom profiles. In fact, not a single bottom replied to a bottom profile, and only 2.4% of respondents to bottom profiles identified as a versatile/bottom. Therefore, it may be more acceptable among some blacks (and nonblacks) to identify as a top or versatile/top than to identify as a bottom.

104. See Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 Harv. L. Rev. 1331, 1373 (1988) (setting forth a binary paradigm of black-white stereotypes, including the belief that black people are "criminal" and "immoral"). I thank Jerry Lopez for this insight.

stereotype of black male endowment/virility and the context of a sex-oriented web site¹⁰⁵ that for many users may be quite distinct from the search for a life partner.¹⁰⁶ However, the black top profiles got half the e-mails of the Latino top profiles (twenty-six versus fifty-two) and about the same as the Latino bottom profiles (twenty-six versus twenty-seven). Thus, although the stereotypes about black male sexuality create a market for black top profiles, they remain subordinate to the white top and Latino top, and they surpass only the Asian top in market power among tops (twenty-six versus seventeen).

In contrast to blacks and Latinos, sex role did not make a difference for Asians. Although Asians ranked below whites and Latinos, there was no disparity between the Asian top and Asian bottom profiles. Indeed, each drew exactly seventeen e-mails in the entire study.¹⁰⁷ We expected the Asian top profiles to be disadvantaged as much as the black bottom profiles because they are counterstereotypical. Yet, the black top profiles received only a few more e-mails than the Asian top profiles. This finding might suggest that the stereotype of Asian men as feminine is no longer very salient among MSM. At the same time, our Asian top profiles may have been viewed as exceptions to the stereotype. Because the profiles reported the model's statistics to be five feet nine, 165 pounds, with an eight-inch endowment (statistics that we expected to attract many users), the Asian top profiles may have surmounted the stereotype. A future study could test this by using less attractive statistics, say, five feet five, 120 pounds, and a six-inch endowment to determine whether the Asian top profiles incur greater disadvantage than appeared in our study. Relatedly, the Asian bottom profiles may not have benefited much from the stereotype of Asian male

105. Although the site gives users the option of indicating a preference for friendship and/or a relationship, the user is bombarded with sexually explicit advertisements for pornographic movies and online services and none that promotes friendships or relationships. These ads, which support the free service, may channel men toward sex.

106. Several profiles conflated blackness with masculinity and an expectation that a black man perform the top role. For example, one thirty-nine-year-old white man who identified primarily as a top indicated that he would "flip" and play the bottom role for a black man: "Hairy aggressive verbal masculine top looking for kinky bottom and am open to being versatile to black masculine tops." A thirty-four-year-old Puerto Rican bottom echoed the stereotype of black male virility: "NSA [no strings attached] PUERTO RICAN MASCULINE MUSCULAR BOTTOM LOOKING TO SPREAD EAGLE FOR MASCULINE HUNG RAW [unprotected sex] BLACK TOPS. . . . BEST THING IN LIFE IS FEELING ANOTHER MASCULINE MAN HAVE HIS ORGASM INSIDE MY ASS." A few men of color associated whiteness with effeminacy. A twenty-three-year-old mixed man who describes himself as a "Rican Dominican Arab Italian Grey Eye Dr Feel Good" and who appears black or Latino, emphasized that he is "into ETHNIC mixxed [sic] guys" and "I am not into caucasian the WeHo/Chelsea Ambercrombie [sic] FISH." "Fish" is a derisive term for female genitalia. This profile goes on to rule out "anyone who uses the term BLATINO and . . . Homothugs." Interestingly, as problematic as some of this man's assumptions are, he is seeking to define a space between the dominant and white West Hollywood scene and the "Homothugs" that emulate 50 Cent.

107. The demand for Asian top profiles was roughly the same in New York and Los Angeles. For the Asian bottom profiles, there was much more demand in Los Angeles (thirteen e-mails) than New York (four e-mails).

effeminacy. However, it may be telling that Asians were the only racial group for which the demand for bottoms matched that for tops. In general, the preferred bottom was white, followed by Latino. The white bottom profiles received more than twice as many e-mails as the Asian bottom profiles (thirty-eight versus seventeen).

A third finding is that whites appear to have a special advantage in that they may take on a top or bottom role without incurring significant penalties in the marketplace.¹⁰⁸ A Latino top who becomes a bottom gives up a significant privilege, since the Latino top profiles generated the most interest in the entire study and the Latino bottoms garnered about half as many e-mails (fifty-two versus twenty-seven). Black men similarly face considerable pressure to perform a top role. Although the black top remains disadvantaged relative to the Latino and white tops, at least that profile received a significant number of e-mails. In Los Angeles, the black bottom received three e-mails; the black bottom profile in New York received just one e-mail.

C. Limitations

There are some limitations to this study that require discussion. First, the profiles that we posted were all men who identified as either a top or bottom. Many men identify as something in between these endpoints on the sex role spectrum: versatile, a versatile/top, or a versatile/bottom. Others list no sex role, and still others express an interest only in oral sex. This study's conclusions may not apply to men in these categories. One explanation for the disparity in the responses to the top and bottom profiles may be that the pictures and statistics for the top profiles were regarded as more attractive. The top photos showed the model's torso, which included a well-defined chest and six-pack abdominal muscles. For some of the bottom photos, the model was photographed from the side or from the back. In these photos he may not have appeared as muscular and athletic as in the top photographs. Although we anticipated that muscle and athleticism would be more important to users seeking a top, it is possible that bottom profiles using the top photographs would have drawn greater interest. However, some profiles indicated a preference for a slimmer build in a bottom. Thus, it is hard to know the ultimate impact on this issue. Further, the endowment listed in all profiles may have provided the top profiles with an advantage. It appears that a profile with an eight-inch endowment is above average on the web site, which might have made our top profiles especially appealing. By contrast, because the bottom plays the receptive role in anal intercourse, some users may have viewed his endowment as irrelevant. At the same time, some respondents commented favorably on the bottom's endowment and expressed an interest in performing oral sex on him.

108. The findings suggest that Asians also enjoy this freedom. However, regardless of the role they assume, Asians drew less interest than whites.

Additionally, because of prevalent stereotypes of black men, the black profiles may have been disadvantaged because they did not conform to the stereotype of a black man. Instead of featuring the brown skin tone of Denzel Washington or Wesley Snipes, the photos accompanying the black profiles appeared to be closer to the skin tone of Barack Obama. Moreover, it is possible that inflated expectations of black male endowment made our black profiles appear to be merely average for black men or even below average. However, we were committed to using the same model and same statistics for each profile even though we realized that each profile would be read in light of prevailing racial stereotypes. In pretesting the photos, I showed them to several people who understood the design of the study. One person responded that the model "could not" be black because "black men have bigger builds." (Our model's build was closer to Obama's build than 50 Cent's build.) Of course, black men come in all shapes and sizes, but the black profiles may have suffered if they were perceived as diverging from the iconic image of an aggressive, strapping, and extremely well-endowed black man.

Another limitation is that residential segregation made it extremely difficult to find a romantic marketplace that had a large representation of all races.¹⁰⁹ The selection of neighborhoods with relatively small black populations may have disadvantaged black profiles in particular. On a recent Wednesday night at 10:00 p.m. (EST) in New York City, a search revealed just nine black tops online in midtown (the neighborhood where all profiles resided). Yet there were forty-four black tops in central Harlem. Thus, posting the profiles in Harlem or parts of Brooklyn may have produced greater interest from black users.¹¹⁰ By posting the black profiles in midtown New York and downtown Los Angeles, we forced them to compete with all other races in a white-dominated marketplace, and, for the most part, they came out on the losing end. Although the black profiles likely would have benefited from being posted in Harlem, blacks enjoyed greater overall representation in the online community (sixteen percent) than Asians (six percent), and yet the black bottom fared much worse than the Asian bottom. These findings speak to the demand for men of color who perform particular sex roles in white-dominated markets, but they reveal little about the preferences of men in racial/ethnic enclaves where one race or ethnicity dominates.

CONCLUSION

Some readers might perceive this essay to point in different directions. One part explores the possibility of regulating web site design in order to

109. Overall racial demographics in the online community, which are based on our count of 100 randomly displayed profiles each time we posted a profile, are as follows: 46% white, 18% Latino, 16% black, 13% mixed, 6% Asian, and 1% Middle Eastern.

110. Posting all profiles in Harlem would have raised concerns about the nonblack profiles, especially the white and Asian profiles.

encourage people to consider people who do not match their racial preferences. Another part demonstrates how perceptual differences and racial microaggressions can manifest a gulf between two people in an intimate relationship. To some extent, this tension reflects the difficulty of the topic itself. "The subject of interracial intimacy bristles with complexity and paradox, mystery and drama . . ." ¹¹¹ And, of course, intimacy is a delicate thing. Thus, while we should think critically about race, gender, and intimacy, we should approach any potential intervention with caution. Having said that, online dating may provide a productive example of a context in which the law might remove barriers to equality through structural changes without regulating intimacy preferences as comprehensively as it attempts to regulate discrimination in employment and housing.

The risk of disproportionately burdening minorities who do not live or work in predominantly white spaces might be reduced by the existence of race and ethnicity-themed web sites such as BGCLive.com ("BGC" stands for "Black Gay Chat") and, in the related context of religion, JDate.com. These sites are intended for people who identify based on a minority status and wish to meet others who share that status. Many such sites, however, do not restrict access to people who share the status. Thus, non-Jews are present on JDate.com, and it appears that white men are present on BGCLive.com. The two web site domains—"mainstream" sites like Match.com, and race/ethnicity-themed sites like BGCLive.com—thus provide greater options for minorities who may or may not want to date majority members. Similarly, the A4A study suggests that there are multiple romantic marketplaces in a single city. Recognizing the value ascribed to men of his race and sex role in the white-dominated "mainstream," a man of color might reasonably attempt to opt out of this hierarchy and pursue romantic fulfillment in other spaces.

111. Kennedy, *supra* note 21, at 37.

Notes & Observations